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SUMMARY RECORD OF THE 31st MEETING

Chairman: Mr. ZARIF (Islamic Republic of Iran)

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The meeting was called to order at 3.25 p.m.

AGENDA ITEM 132: CONSIDERATION OF THE DRAFT ARTICLES ON THE STATUS OF THE DIPLOMATIC COURIER AND THE DIPLOMATIC BAG NOT ACCOMPANIED BY DIPLOMATIC COURIER AND OF THE DRAFT OPTIONAL PROTOCOLS THERETO (A/C.6/47/L.8)

1. Mr. TOMKA (Czechoslovakia), reporting orally on the informal consultations concerning the draft articles under consideration, which he had conducted, said that the consultations had been held during eight meetings; it had been agreed that the negotiations should be resumed at the point where they had been left off the previous year. It had been felt that an effort should be made to reach a consensus solution on the draft articles which raised particular difficulties, namely articles 28, 17, 18, 13, 15, 19, 20 and 30; it had been generally considered, however, that progress on article 28 was essential if the negotiations were to be successful on the draft articles as a whole.

2. The text of draft article 28 submitted at the previous session (see A/C.6/46/SR.40) read:

> "1. The diplomatic bag shall be inviolable wherever it may be. Subject to the provisions of paragraphs 2 to 5, it shall not be opened or detained and shall be exempt from examination directly or through electronic or other devices.
>
> "2. If the competent authorities of the receiving State have serious reason to believe that the diplomatic bag contains something other than the correspondence, documents or articles referred to in paragraph 1 of article 25, they may as an exceptional measure request that they examine the bag by electronic or other technical devices routinely used at ports or airports for the examination of incoming or outgoing items in the presence of an authorized representative of the sending State, provided that the examination does not affect the confidentiality of correspondence or documents. The sending State may refuse the examination, in which case the bag shall be returned to its place of origin.
>
> "3. If the request referred to in paragraph 2 is accepted and after the examination the competent authorities of the receiving State still have serious reason to believe that the diplomatic bag contains something other than the correspondence, documents or articles referred to in paragraph 1 of article 25, they may request that the bag be opened.
>
> "4. If the request is accepted, the bag shall be opened by an authorized representative of the sending State in the presence of an authorized representative of the receiving State.

(Mr. Tomka, Czechoslovakia)

"5. If the request is refused by the authorities of the sending State, the bag shall be returned to its place of origin."

3. Some delegations had expressed serious reservations, particularly with regard to paragraphs 2 and 3. Others had criticized the assimilation regime to which diplomatic bags stricto sensu and consular bags were subjected. In order to overcome those difficulties, as Chairman of the consultations, he had submitted for consideration the following draft article 28, entitled "Protection of the diplomatic bag":

"1. The diplomatic bag shall be inviolable wherever it may be; it shall not be opened. Subject to paragraph 2, it shall not be detained and shall be exempt from the examination through electronic or other technical devices.

"2. If the competent authorities of the receiving State have serious reason to believe that the diplomatic bag contains something other than the correspondence, documents or articles referred to in paragraph 1 of article 25, they may request, as an exceptional measure, that the bag be examined through electronic or other technical devices routinely used at ports or airports for the examination of incoming or outgoing items, in the presence of an authorized representative of the sending State, provided that the examination does not affect the confidentiality of correspondence or documents. The sending State may refuse the examination, in which case the bag shall be returned to its place of origin."

4. He had explained that the proposal should be understood in conjunction with an amendment to the scope of the draft articles which would be limited to the diplomatic bag within the meaning of article 27 of the 1961 Vienna Convention on Diplomatic Relations. As far as consular bags were concerned, they would continue to be regulated by the provisions of article 35 of the 1963 Vienna Convention on Consular Relations. Some delegations had felt that the proposal departed too much from the relevant provisions of the Vienna Convention on Diplomatic Relations; in that connection, several delegations had stressed that they were satisfied with the existing provisions.

5. Faced with the difficulty of reaching a consensus solution on article 28 which would apply to all bags, one delegation had proposed that the possibility of adopting two separate optional protocols should be considered, one for diplomatic couriers and bags stricto sensu and the other for consular couriers and bags. It had submitted two texts, based largely on the Commission's draft articles but omitting article 28, the substance of which would continue to be regulated by the provisions of the relevant conventions. Despite the interest elicited by that proposal, it had soon been realized that no general agreement could be achieved on the texts.

(Mr. Tomka, Czechoslovakia)

6. In view of the impasse in the consultations, some delegations had felt that the Committee should endeavour to reach consensus on a draft decision whereby the General Assembly would express its appreciation to the Commission for the work carried out under the topic and the draft articles would be sent to Governments for their consideration. However, as consultations proceeded on that proposal, it had become clear that no consensus could be achieved on it either. Some delegations had taken the view that not all possible solutions had been explored, and that the valuable work carried out by the Commission on the topic deserved a continuation of the efforts in search of a solution which only time and mature reflection could bring. Other delegations, however, believed that the consultations had lasted long enough to show that there were serious difficulties in reaching general agreement on basic provisions of the draft.

7. Thus, two possible avenues remained. The first was to send the draft articles back to the Commission, in particular the most controversial ones, so that the Commission could consider them once more with a view to reaching a generally acceptable formulation. Some delegations had opposed that proposal because, in their view, the problem was not one of technical formulation but rather one of lack of agreement on the political basis on which the formulation should be built. It was therefore for the General Assembly, a political body, to try to reach general agreement on the Commission's recommendations.

8. The other avenue consisted in resuming the efforts on article 28 and other controversial articles so as to try to reach some formulations which might be generally acceptable. In order to demonstrate that not all possibilities had been exhausted, one delegation had submitted the following draft article 28, entitled "Protection of the diplomatic bag":

> "1. The diplomatic bag shall be inviolable wherever it may be. It shall be exempt from any examination which may jeopardize the confidentiality of its contents and shall not be opened or detained, except as provided for in paragraph 2.
>
> "2. If the competent authorities of the receiving State or the transit State have serious reasons to believe that the consular bag contains something other than the documents, correspondence or articles referred to in paragraph 1 of article 25, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.
>
> "3. The States parties to the present draft articles may at any time declare that, in relation to any other State having made a similar declaration, they shall accept the application of the provisions of paragraph 2 to all diplomatic bags."

(Mr. Tomka, Czechoslovakia)

9. Since no agreement had been reached on that proposal, it had been agreed as a compromise to propose that the item entitled "Consideration of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and of the draft optional protocols thereto" be included in the provisional agenda of the fiftieth session of the General Assembly (A/C.6/47/L.8).

10. The CHAIRMAN suggested that draft decision A/C.6/47/L.8 should be adopted without a vote.

11. Draft decision A/C.6/47/L.8 was adopted without a vote.

12. Mr. MARTINEZ GONDRA (Argentina), explaining his delegation's position on the decision just adopted, said that the Commission had been considering the item for 14 years. In July 1989, after completing a set of draft articles, it had recommended that the General Assembly should convene an international conference of plenipotentiaries to study the draft articles and conclude a convention. In resolution 44/36, the General Assembly had decided to hold informal consultations with a view to facilitating the reaching of a generally acceptable decision in that respect. Those consultations had just been held, and it had not been possible to reach agreement.

13. His Government's position accorded in every respect with the spirit and letter of the relevant international conventions whereby a diplomatic bag was inviolable wherever it might be and could not be opened, detained or subjected to any kind of examination, either directly or through electronic or other technical devices, including those routinely used at ports and airports for the examination of luggage. However, if the competent authorities of the receiving State or the transit State had serious reason to believe that the diplomatic bag contained narcotic drugs, they should be allowed to examine the bag by methods that did not involve any intrusion which could jeopardize the safety or inviolability of the bag. For example, specially trained dogs could be used, in the presence of authorized representatives of the State of origin.

The meeting rose at 3.55 p.m.